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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 163

314-637

JOSEPH OBERGFELL, PETER BOLLENBACHER, ALBERT J. KUGLER, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA, ET AL.,

Petitioners,

vs.

WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

MARTIN F. O'DONOGHUE,
WILLIAM J. HUGHES, JR.,
THOMAS X. DUNN,
NICHOLAS J. CHIASCIONE,
Counsel for Petitioners.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Jurisdiction	1
Opinions below	2
Summary statement of matter involved	2
Questions presented	5
Statement of facts	8
Reasons relied on for the allowance of the writ	13
Brief in support of petition	19
I. Appellate court misconceived the issues in the case	19
II. The so-called "decision" of the A. F. of L. results in the transfer of men, against their will, from one union to another	21
III. Nature and structure of the A. F. of L.	24
IV. Recent declaration of powers by the A. F. of L. in I. T. U. case directly contrary to decision below	31
V. Section 11 of Article IX of the Federation's Constitution protects the established trade jurisdiction of the Brewery Workers Union	33
VI. Gross errors in the opinion of the court below	39
VII. The importance of the international working agreement of 1915	45
VIII. No "labor dispute" being involved the La-Guardia Act does not apply	48
IX. The A. F. of L. should rightly be estopped from dismembering petitioners' union	50
Conclusion	51

Table of Cases Cited.

Axton-Fisher, In re, 1 N. L. R. B. 604	11
Federal Trade Commision v. *Algoma Lumber Co.*, 291 U. S. 67	17, 39

Page

Gompers v. *Buck Stove & Range Co.*, 33 App. D. C. 516 26
International Brotherhood of Teamsters v. *International Union of United Brewery Workers*, 106 F. (2d) 871 11
LaRoe v. *Possehl*, 156 Misc. 476 48
Virginian Rwy. v. *System Federation*, 300 U. S. 515 49

OTHER AUTHORITIES CITED.

Judicial Code, Section 240(a), as amended by the Act of February 13, 1925 1
LaGuardia Act, Sec. 7 7
Rule 52(a) of the Rules of Civil Procedure 17

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WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Petitioners, all the appellees below, respectfully pray for the issuance of a Writ of Certiorari to review the judgment below setting aside a Declaratory Judgment and an Injunction.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of

February 13, 1925. The judgment below was entered March 17, 1941 (R. 2797), a petition for rehearing filed March 31, 1941 being denied May 15, 1941 (R. 2826). The Court below entered a stay of its mandate May 15, 1941 for thirty days, pending application for writ of certiorari, and until such further time as this Court required to dispose of a Petition for a Writ of Certiorari (R. 2826).

Opinions Below.

The opinion of the Trial Court will be found at R. 1642, the Trial Court's Findings of Fact Numbers 1-67, R. 1672-1690, and the Conclusions of Law Numbers 1-20, R. 1690-1692. The opinion of the Court below will be found in the record at R. 2769.

The opinion of the Trial Court is reported in 29 Fed. Supp. 589; that of the Court below in — F. (2d) —.

Summary Statement of Matter Involved.

Trial Court's Decision:

The Trial Court granted a Declaratory Judgment (R. 2689-90) to the effect that under its contract of affiliation with the Brewery Workers Union, the A. F. of L. was obligated to protect the trade jurisdiction that the Brewery Workers Union possessed prior to its affiliation in 1887, and that the A. F. of L. had no power to transfer the trade jurisdiction of the Brewery Workers Union over beer drivers to the Teamsters Union. The Trial Court held further in effect that such an order would result in the transfer (Finding of Fact 39, R. 1683) against their will of some 15,000 beer drivers (the balance of 35,000 in the Brewery Workers Union being brewers, maltsters, bottlers, etc.) from the Brewery Workers Union to the Teamsters Union,[1] thus

[1] The A. F. of L. in 1934 took a referendum vote of the Brewery Workers as provided by Section X of the Brewery Workers Constitution (R. 1682-3) and 99.7% voted to remain in the Brewery Workers Union, but in spite of this, the A. F. of L. went ahead with the transfer.

destroying their interests in closed-shop collective bargaining agreements, and depriving them of death, sick, strike and out-of-work benefits (Conclusions of Law 17, R. 1692). The Trial Court, therefore, enjoined officers of the A. F. of L. and the Teamsters Union from breaching the contract (R. 1668-1671).

Injunction Reversed:

The D. C. Court of Appeals reversed, holding the injunction invalid on the ground that the LaGuardia Act applied, and the findings as to police protection were insufficient (R. 2774-5). The Court also held there was no formal finding of notice to these police officials, as to which Mr. Justice Stephens dissented. Likewise he dissented from the holding that formal findings must be made *prior* to the injunction even if later findings were adequate (R. 2796).

Declaratory Judgment Reversed:

In spite of the referendum vote of 99.7% of the Brewery Workers to remain in the Brewery Workers Union (no mention of this fact was made in the opinion below) and the public policy of the Wagner Act establishing the workers' right to belong to the union of their own choice, the Court below held that the A. F. of L. had the power, under its Constitution, to alter "membership jurisdiction" (R. 2782, 2793) pursuant to a "large and comprehensive plan for the protection and benefit of toiling millions of laborers" (R. 2781) and pursuant to the "large objectives" (R. 2793) of the A. F. of L. to form a "more perfect federation" (R. 2781), to decide that

> "Teamsters and chauffeurs in the brewery industry properly belong to and come under the jurisdiction of the International Brotherhood of Teamsters" (R. 2770).

The Court below, overturning Findings of Fact by the Trial Court, held squarely that the A. F. of L. had full control over "membership jurisdiction" of its constituent autonomous international unions and had full power inherently (R. 2779, 2786, 2793) and flowing from the absence of prohibition in its constitution, to decide to which of two A. F. of L. unions beer drivers should belong and to enforce its decision "by any proper action" (R. 2794). The Court below thereupon reversed the Declaratory Judgment (R. 2797).

Petitioners' position below and here is that the decision of the A. F. of L. was invalid and was an order of transfer of beer drivers from one union to another, an order which the A. F. of L., under its Constitution, had no power to make and which the Brewery Workers Union had no power, or even machinery, under its own Constitution, to put into effect. An inspection of the Constitution of the Brewery Workers Union (R. 1809) shows that it has no power whatever to force beer drivers to transfer from the Brewery Workers Union to the Teamsters Union (see Opinion of Trial Court, R. 1665). If such an order were carried out, it was proved at the trial that the beer drivers would lose sick, death, strike, and out-of-work benefits and their interest in collective bargaining agreements in being compelled to leave the union of their choice and join the Teamsters Union (Finding of Fact 59, R. 1689).

Respondents, on the other hand, claim that if dissatisfied with the order the Brewery Workers Union, composed of 15,000 beer drivers and 35,000 brewers, maltsters, bottlers, etc., could simply withdraw from the A. F. of L. and continue as an independent union. In that event by reason of the superior economic and organizational power of the A. F. of L. and the Teamsters Union (300,000 strong) the result would be the destruction of the Brewery Workers Union and their numerous collective bargaining agreements. Thus the

facts show a complete destruction of the beer drivers' rights to belong to the union of their own choice and a confiscation of their property rights. Hence the case presents the following questions:

Questions Presented.

(1) Has the A. F. of L. power under its Constitution to enter an order transferring jurisdiction over beer drivers from the Brewery Workers Union (which had it since 1886) to the Teamsters Union and to carry it into effect so as to force a transfer of men from one union to another.

(2) Is not such a Constitutional interpretation where it compels the transfer of men from one union to the other against their will and thus destroys rights of liberty and property, collective bargaining agreements, etc., so oppressive and unreasonable and in violation of the public policy of the Wagner Act and the LaGuardia Act, and the law generally, that a court must hold it void. Is not the A. F. of L. estopped by acquiesence for 54 years and by submitting the question to a Referendum vote of the Brewery Workers Union in 1934.

(3) Is it a defense to the illegality of such a Constitutional interpretation and an order based on it for the A. F. of L. to contend the Union can resign from the A. F. of L. (or be expelled), when this would destroy the right to belong to a union of one's own choice and likewise destroy the workers actual jobs, their interests in collective bargaining agreements and other property rights. It should be stated that petitioners do not contend that they have a right to remain in the A. F. of L. under any and all circumstances. Their contention is that if the order is invalid, either under the Constitution of the A. F. of L. or the law of the land, they have the usual right of an affiliated union to enjoin such

breach and to remain part of the A. F. of L. in accordance with their contract of affiliation.

(4) Assuming but not conceding the A. F. of L. had power to make the order, power to enforce it and that under the law of the land both are not illegal in operating as a practical transfer of men from one union to another against their will, the following additional questions arise:

(5) Did the A. F. of L. *validly exercise* the power when it arrived at its decision not upon a true state of facts but on a false state of facts arising from the denial on the floor of the Convention by Tobin, President of the Teamsters Union (Finding of Fact 33, R. 1681-2) of the existence of the International Working Agreement between the Brewery Workers Union and the Teamsters Union of February 15, 1915, wherein the Teamsters Union conceded that as between the two unions jurisdiction over beer drivers was in the Brewery Workers Union and not in the Teamsters Union. Tobin even went so far as to say if any such agreement was produced his signature on it was a clever forgery (Finding of Fact 34, R. 1682). Later, however, in an affidavit filed in the Trial Court below Tobin admitted not only the existence of the Agreement and that he had signed it, but that he had actually had it ratified by his own Union's Convention (R. 40). The Trial Court held that if Tobin had admitted the existence of the Agreement on the floor of the Convention the order of the 1933 Convention would probably not have been passed (R. 1665).

Justice Miller's opinion below *makes no mention* of this decision of the matter by the A. F. of L. on a false state of facts induced by the fraud of one of the parties though the Trial Court made a specific Finding of Fact to this effect (Finding of Fact 33, R. 1681; Opinion, R. 1665). Hence the question arises whether this is not of itself an independent ground of decision adequate to support the Trial Court's

judgment that the order of transfer was invalid and so requiring affirmance. As part of this question there is likewise the question whether the conclusion of the Court below that the A. F. of L. was not, under its Constitution, required to respect a solemn Agreement of 19 years standing and operation, was correct. There is the further question whether the Court below was correct in holding the International Working Agreement of 1915 was no agreement at all on the ground that it had no expiration date (R. 2792-3) and was otherwise invalid.

(6) As the Court below has overturned almost every substantial Finding of Fact on the constitutional powers of the A. F. of L. drawn from its history and conduct, ignoring the 1933 Constitution, and making its own appraisal of the testimony among uncertain and conflicting inferences, the question arises whether the court below has not violated Rule 52(a) of the Rules of Civil Procedure prohibiting such action unless such findings are clearly erroneous.

(7) Whether the Court below was not wrong in finding that a labor dispute was involved within the meaning of the LaGuardia Act and even if it was right in this, whether it was wrong (after conceding that all the other Findings required by the LaGuardia Act as to force and violence, irreparable injury, etc. were present) in holding a Chief of Detectives was not the "chief of those public officials" etc. within the meaning of Section 7 of the LaGuardia Act—again overturning a specific Finding of Fact of the Trial Court (Finding of Fact 48, R. 1685-6; Finding of Fact 65, 66, R. 1689-90). Likewise was formal notice required if the police official testified and where the court adopts its opinion as LaGuardia Act findings cannot amended findings be filed later (R. 1667). Petitioners contend the LaGuardia Act is in no way applicable but that if applicable the findings below were adequate or could be made adequate.

Statement of Facts.

Teamsters Forty (40) Year Effort to Obtain Beer Drivers:

The Brewery Workers Union, now composed of 15,000 beer drivers and 35,000 brewers, maltsters, etc., joined the A. F. of L. in 1887, the Teamsters Union in 1899 (R. 1672). At the time the Brewery Workers Union joined the A. F. of L. The Brewery Workers Union had been in existence since 1872 and had organized the Brewery Workers of America into a compact union which, in 1933, had closed-shop collective bargaining agreements covering 98% of the breweries of the United States (Finding of Fact 49, R. 1686). The industry had enjoined industrial peace for 50 years (R. 777, 780).

In contrast, the Teamsters Union did not, at the time of its affiliation have in its membership beer drivers, as all beer drivers were members of the Brewery Workers Union (Finding of Fact 6, R. 1672). In spite of this in 1900 the Teamsters claimed jurisdiction (within the A. F. of L.) over beer drivers and asked that the Federation order all beer drivers who were members of the Brewery Workers Union to transfer their membership to the Teamsters Union (R. 492). The 1900 Convention held that it could not by resolution or otherwise order the transfer of men from one organization to the other without their consent and further held that the prior right (within the A. F. of L.) of a prior affiliated union over a later incoming union should be protected (Finding of Fact 14, R. 1674), in accordance with the Constitution of the A. F. of L. which guaranteed to protect the established trade jurisdiction of its affiliated unions against any encroachment (Findings of Fact 9, 10, R. 1672-1673). In spite of this the Teamsters Union over a period of 30 years, made continued efforts to have the A. F. of L. order the beer drivers transferred from the Brewery Workers Union to the Teamsters Union.

Hence, under the Constitution of the Brewery Workers Union, the beer drivers if transferred would lose all their sick, death, strike, and out-of-work benefits built up over a period of years in the Brewery Workers Union, and of course all their interest in hundreds of closed-shop collective bargaining agreements.

The 1915 Working Agreement:

On February 15, 1915, peace was made between the two unions by an International Working Agreement signed by Tobin, president of the Teamsters Union, and Hughes, secretary-treasurer, and likewise signed by Obergfell, president of the Brewery Workers Union, under which mutual concessions were made by the two unions and the Teamsters agreed that beer drivers should come under the jurisdiction of the Brewery Workers Union (Finding of Fact 27, R. 1678-1680).

The 1933 Order of Transfer:

Matters stood thus until March 31, 1933, when suddenly out of a clear sky William Green, president of the A. F. of L., notified the president of the Washington State Federation of Labor that jurisdiction over beer drivers was in the Teamsters Union (R. 1683-1684). He followed this up by a letter dated April 10, 1933, citing the Brewery Workers Union to appear before the Executive Council on April 20, 1933, to show cause why the Teamsters did not have jurisdiction over beer drivers (R. 1680). The Brewery Workers Union appeared, asserted their jurisdiction, and protested against the Executive Council or the Federation having any power to transfer beer drivers in violation of the contract of affiliation and in violation of the International Working Agreement with the Teamsters of February 15, 1915. At the hearing before the Executive Council Tobin denied the existence of this Agreement although the orig-

inal was submitted and when the Executive Council, having ruled against the Brewery Workers, brought the matter before the Convention, Tobin again solemnly denied the existence of the International Working Agreement of 1915 and stated that if his signature appeared upon any such agreement it was clever forgery (Findings of Fact 31, 32, 33, and 34, R. 1680-1682). The Convention thereupon and probably for this reason, in the opinion of the Trial Court (R. 1665), held that jurisdiction over beer drivers was in the Teamsters Union (R. 414). Tobin admitted in an affidavit filed at the present trial not only that he signed the Agreement but that he had it ratified by the Teamsters' Convention.

Referendum Vote Ignored; A. F. of L. Carries Out Order of Transfer:

In 1934 William Green, president of the A. F. of L., conducted a referendum vote of all Brewery Workers on the question of the transfer of beer drivers. This was in accordance with Article X of the Brewery Workers' Constitution (R. 1869-70). The Brewery Workers voted 99.7% to remain in the Brewery Workers Union and not to be compelled to join the Teamsters Union (Findings of Fact 35, 36, and 37, R. 1682-1683). In spite of this Green continued to enforce the transfer of beer drivers from the Brewery Workers Union to the Teamsters Union (Findings of Fact 38-39, R. 1683). To that end Green notified all State Federations and Central Labor Bodies and all National and International Unions of the decision and advised them to see to it that it was complied with and carried out. The A. F. of L. further advised State Federations of Labor and Central Labor Bodies to suspend and expel all Local Brewery Workers Unions affiliated with them if they did not comply with the decision of the A. F. of L. in awarding jurisdiction over beer drivers to the Teamsters Union

(Finding of Fact 39, R. 1683). In addition the Federation advised the brewery owners who had collective bargaining agreements with the Brewery Workers Union that thereafter they must deal exclusively with the Teamsters Union with regard to beer drivers, irrespective of the wishes of the beer drivers, and not to enter any further collective bargaining agreements with the Brewery Workers Union (Finding of Fact 40, R. 1682-1684).

Teamsters Likewise Put A. F. of L. Order Into Effect:

Citing the Federation's decision, the Teamsters approached brewery owners all over the country and demanded that they cooperate with the Teamsters in putting the decision into effect. They demanded that the beer drivers should join the Teamsters Union in default of which the Breweries should discharge them. In the event the Breweries refused to comply, the Teamsters picketed the plant and placed the brewery's products on the Unfair List (Findings of Fact 41, 42, 43, R. 1684). When the beer drivers refused to comply the Teamsters entered into agreements with various employers in the Far West under which the breweries discharged their beer drivers and employed Teamsters as beer drivers.[2] When the employers refused to accede, the Teamsters placed a secondary boycott on all their products and refused to ship them in interstate commerce or otherwise. The program of the Teamsters led to violence in many States and members of the Brewery Workers Union were beaten up with brass knuckles and lead pipe, their trucks bombed, etc. (Findings of Fact 44, 45, 46, R. 1684-85). The Court found all the above facts against the

[2] The Brewery Workers Union made this the basis of charges before the NLRB under the NRA Act. The Board held it had no jurisdiction, both the unions involved being A. F. of L. unions. The present NLRB takes the same position. *International Brotherhood of Teamsters* v. *International Union of United Brewery Workers,* 106 F. (2d) 871; *In re Axton-Fisher,* 1 NLRB 604.

Teamsters and conversely found as a fact that the evidence failed to show that the Brewery Workers Union had committed unlawful acts of any kind (Finding of Fact 47, R. 1685).

The Chief of Detectives of Portland, Oregon, testified that the local police authorities were unable to give adequate protection by reason of various acts of assault and violence, bombing of trucks and taverns, breaking of windows and puncturing of tires, etc. (Finding of Fact 48, R. 1685-1686).

The above evidence as to violence was to show the *effect* of the illegal order as enforced.

Continuing and Irreparable Injury to Brewery Workers Union:

Due to these coercive activities of the A. F. of L. and the Teamsters Union not only beer drivers, but brewers, maltsters, bottlers, etc., were discharged by the employers (Finding of Fact 52, R. 1687), and the interest of the workers in the closed-shop collective bargaining agreements the Brewery Workers had with over 98% of the breweries in the United States was destroyed (Finding of Fact 49, R. 1686; Findings of Fact 54-55, R. 1688). Likewise, as a result of these activities the Brewery Workers Union was compelled to pay strike and lock-out benefits in Tacoma, Washington, in the amount of $27,136; $161,589 in Spokane; $125,523 in Seattle; $182,064 in Portland; and $159,966 in Cleveland, Ohio. The Trial Court found as a fact that these sums were paid out by the Brewery Workers Union in accordance with its Constitution because the men were discharged from employment when they refused to quit their own Union and join the Teamsters (Finding of Fact 51, R. 1686-1687). Respondents coercive activities continued up to and during the actual trial of the present case, June 3, 1939 (R. 806-807). The Trial Court made extensive Findings of Fact

that the coercive violation of petitioners' rights was a continuing condition (Findings of Fact 49, 50, 51, R. 1687-9; 1692).

Unable to obtain any relief in the A. F. of L., the Brewery Workers Union, one of its locals and a *member* of one of its locals, filed the present suit asking for an injunction and a declaratory judgment, the injunction to restrain the A. F. of L. and its officials from violating the contract of affiliation between the A. F. of L. and the Brewery Workers Union made under the Constitution of the A. F. of L., under which contract the A. F. of L. was required to protect the trade jurisdiction *already possessed* by the Brewery Workers Union prior to affiliation with the A. F. of L., and likewise to restrain the A. F. of L. and its officials from promoting the breach by the Teamsters of the International Working Agreement of February 15, 1915. Also the Court was asked to restrain the Teamsters Union and its officials in the above respects. The Declaratory Judgment was to declare in favor of the Brewery Workers Union the rights under contracts thus sued on.

Declaratory Judgment and Injunction Granted.

As already indicated the Trial Court granted a Declaratory Judgment (R. 1667) and an Injunction (R. 1668-9) both of which were reversed by the Court below.

Reasons for the Allowance of the Writ.

1. *Importance of the case.*—Even respondents referred below to the "unusual and transcendent issues raised by the instant case" (R. 2830).

In spite of the fact that the record showed the brewing industry was 98% organized by the Brewery Workers Union for the past 50 years (Finding of Fact 49, R. 1686) with over 300 closed-shop collective bargaining agreements and that the A. F. of L.'s referendum vote showed that the

Brewery Workers Union was the choice of 99.7% of its members (Findings of Fact 35-37, R. 1682-1683), Mr. Justice Miller's opinion validates an order which is an attempt to transfer some 15,000 beer drivers from the union of their choice to the Teamsters Union, the workers thus losing the benefit of their collective bargaining agreements and also their strike, sick, death, and out-of-work benefits in the Brewery Workers Union. In an effort, therefore, to avoid what Mr. Justice Miller calls "crystallizing" membership in unions *within* the A. F. of L. in accordance with that union's *de facto* organization of a particular industry when it *came into* the A. F. of L., and *at the present time* the Court below has held for the first time, contrary to all authorities on the nature and structure of the A. F. of L., that it has control over the "membership jurisdiction" of autonomous International Unions which compose it, and thus can dismember and destroy an International Union whenever it sees fit under the guise of a jurisdictional award or trade autonomy.

So extraordinary is the decision below that the A. F. of L. has already, in the case of the International Typographical Union, formally disavowed the holding of the Court below that the A. F. of L. has "membership jurisdiction" over affiliated International Unions (R. 2802).

Mr. Justice Miller's opinion in validating the right of the A. F. of L. to force the transfer of men from one union to another on pain of loss of their jobs and other property losses, makes the judgment below the spearhead of a Fascist State. A case more important for this Court can hardly be imagined. It affirms the existence and legality of an invisible government within a government, a government capable of forcing the transfer of men against their will from one union to another, contrary to the public policy of the Wagner Act guaranteeing them the union of their choice

and against the objectives of industrial peace of both the Wagner Act and the LaGuardia Act.

2. The numerous errors of the court below as to the nature and structure of the A. F. of L. likewise constitute, we believe, questions of sufficient importance to warrant the issuance of the Writ. Students of labor law all know that the American Federation of Labor is composed of autonomous International Unions, all completely sovereign in their own right. Now, for the first time, a court has reached the extraordinary conclusion that the A. F. of L. possesses control of the "membership jurisdiction" of the autonomous International Unions and can, in effect, shift men from one union to another thus confiscating their property rights in International and local unions. This is a matter of vast importance to the International Unions which constitute the A. F. of L. and their 4,000,000 members, and of itself furnishes ample grounds for this Court's issuance of the Writ.

3. Similarly the decision of the court below in holding the A. F. of L. has power to abrogate agreements as to jurisdiction between two autonomous International Unions is so extraordinary as to merit this Court's review. We believe that literally thousands of such agreements exist, all of which are now subject to abrogation by the A. F. of L. in order to achieve what Mr. Justice Miller calls the "large and comprehensive plan" (R. 2781) of the A. F. of L. in fostering the right of the workers to "full freedom of association, self-organization and designation of representatives" (R. 2793). This has a hollow ring when the referendum vote showed 99.7% refused to surrender membership in the Brewery Workers Union. It is safe to say that if the decision below is upheld, industrial chaos will result and prohibitive legislation destructive of the social gains achieved

by the working man in the present administration will be enacted.

4. The decision below is a patent misconstruction of the issues in the case and of the LaGuardia Act. The injunction below operates in personam against the executive officers of the A. F. of L. and the Teamsters Union. It operates at the Executive offices of the A. F. of L. at 9th and Massachusetts Avenue, N. W., Washington, D. C., and nowhere else. It is based upon the right of equity to prevent a continued breach of contract and to enjoin the promotion of such a breach. It does not pretend to enjoin the actual participants in "the allowable area of economic conflict" but simply restrains the officers of the A. F. of L. and the Teamsters Union, Messrs. Green, Tobin, et al. as they sit behind their desks. Not even their agents are mentioned (R. 1668-1669). The question involved is a breach of the terms of a contract between the Federation and the Brewery Workers Union, a union already fully organized, plus the Federation forcing the transfer against their will of 98% of all the beer drivers in this country, from the Brewery Workers to the Teamsters Union. There is no "labor dispute" unless the A. F. of L. is held to have the extraordinary power to determine for itself what union the worker must belong to for collective bargaining purposes. This was held by the court below (R. 2773) but seems such clear error as to require this Court's interposition. But, in addition, assuming a "labor dispute" was present, the court below was in error in overturning as without substantial basis a Finding of Fact of the Trial Court (Finding of Fact 66, R. 1689-1690) based on the testimony of a Chief of Detectives that the "public officers charged with the duty to protect complainants' property were unable or unwilling to furnish adequate protection" (LaGuardia Act, Section 7) and was wrong in its other rulings as to the LaGuardia Act.

5. The decision of the court below in overturning extensive Findings of Fact, resulting from a one month's trial, as to the powers of the A. F. of L., its structure, etc., is in violation of Rule 52(a) of the Rules of Civil Procedure to the effect that:

> "Findings of Fact shall not be set aside unless clearly erroneous".

and the Committee Note on the above rule to the effect that:

> "It is applicable to all classes of findings in cases tried without a jury whether the finding is of a fact concerning which there is conflict of testimony, *or of a fact deduced or inferred from uncontradicted Testimony*".

The wholesale reversal of Findings of Fact by the court below was condemned by this Court in *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73, wherein this Court, in reversing the Appellate Court said:

> "What the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences".

WHEREFORE, petitioners pray that the petition herein be granted and the judgment below be reversed.

Respectfully submitted,

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